



[Investigation No. 337-TA-1216]

Certain Vacuum Insulated Flasks and Components Thereof; Commission Final Determination of Violation of Section 337; Issuance of a General Exclusion Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has issued a general exclusion order (“GEO”) barring entry of certain vacuum insulated flasks and components thereof that infringe the patents and the trademarks asserted in this investigation. The Commission has terminated this investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On September 3, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Steel Technology LLC d/b/a Hydro Flask and Helen of Troy Limited (collectively, “Complainants” or “Hydro Flask”). 85 FR 55030-31 (Sept. 3, 2020). The complaint alleges a violation of section 337 in the importation into the

United States, the sale for importation, or the sale within the United States after importation of certain vacuum insulated flasks and components thereof by reason of infringement of: (1) the sole claims of U.S. Design Patent Nos. D806,468 (“the D’468 patent”); D786,012 (“the D’012 patent”); and D799,320 (“the D’320 patent”), respectively; and (2) U.S. Trademark Registration Nos. 4,055,784 (“the ’784 trademark”); 5,295,365 (“the ’365 trademark”); 5,176,888 (“the ’888 trademark”); and 4,806,282 (“the ’282 trademark”). The complaint also alleges the existence of a domestic industry. The notice of investigation names numerous respondents: Cangnan Kaiyisi E-Commerce Technology Co., Ltd.; Shenzhen Huichengyuan Technology Co., Ltd.; Sinbada Impex Co., Ltd.; Yongkang Huiyun Commodity Co., Ltd.; Wuyi Loncin Bottle Co., Ltd.; Zhejiang Yuchuan Industry & Trade Co., Ltd.; Zhejiang Yongkang Unique Industry & Trade Co., Ltd.; Suzhou Prime Gifts Co., Ltd.; Hangzhou Yuehua Technology Co., Ltd.; Guangzhou Yawen Technology Co., Ltd.; Jinhua City Ruizhi E-Commerce Co., Ltd.; Wo Ma Te (Tianjin) International Trade Co., Ltd.; and Shenzhen City Yaxin General Machinery Co., Ltd. (collectively, the “Defaulting Respondents”); Eddie Bauer, LLC; PSEB Holdings, LLC; Dunhuang Group a.k.a. DHgate; Everich and Tomic Houseware Co., Ltd.; HydroFlaskPup; Yiwu Honglu Daily Necessities Co., Ltd.; and Yiwu Houju E-commerce Firm. The Commission’s Office of Unfair Import Investigations (“OUII”) is also named as a party in this investigation. *Id.*

Subsequently, the Commission permitted Hydro Flask to amend the complaint and notice of investigation to: (1) assert the D’012 patent against additional infringing products; (2) incorporate into the complaint the information and additional paragraphs included in Complainants’ Supplemental Letter to the Commission of August 18, 2020; and (3) correct the corporate names of four non-appearing respondents – Yiwu Houju E-Commerce Firm; Jinhua City Ruizhi E-Commerce Co., Ltd.; Wo Ma Te (Tianjin) International Trade Co., Ltd.; and Shenzhen City Yaxin General Machinery Co., Ltd. Mot. at 1. Order No. 12 (Nov. 6, 2020), *unreviewed by* Notice (Nov. 24, 2020); *see* 85 FR 77239-40 (Dec. 1, 2020). The Commission

terminated the investigation as to the following respondents based on consent orders and/or settlement agreements: Eddie Bauer LLC and PSEB Holdings, LLC; DHgate; Everich and Tomic Houseware Co., Ltd. Order No. 13 (Nov. 30, 2020), *unreviewed by* Notice (Dec. 21, 2020); Order No. 17 (Jan. 27, 2021), *unreviewed by* Notice (Feb. 16, 2021); Order No. 19 (Feb. 22, 2021), *unreviewed by* Notice (Mar. 12, 2021). The Commission also terminated the investigation with respect to the '282 trademark. Order No. 16 (Jan. 11, 2021), *unreviewed by* Notice (Feb. 8, 2021).

On April 14, 2021, the Commission found the Defaulting Respondents in default. Order No. 21 (Mar. 22, 2021), *unreviewed by* Notice (Apr. 14, 2021). The Commission also permitted Hydro Flask to withdraw the amended complaint as to the remaining respondents: HydroFlaskPup, Yiwu Honglu Daily Necessities Co., Ltd., and Yiwu Houju E-commerce Firm. Order No. 22 (Apr. 7, 2021), *unreviewed by* Notice (Apr. 22, 2021).

On April 8, 2021, Hydro Flask filed a motion for summary determination of a violation of section 337 pursuant to Commission Rules 210.16(c)(2), 210.18 (19 CFR 210.16(c)(2), 210.18) to support its request for entry of a GEO with respect to all asserted patents and trademarks. On August 9, 2021, OUII filed a response in support of the motion.

On September 3, 2021, the presiding chief administrative law judge ("CALJ") issued an initial determination ("ID") granting in part Hydro Flask's motion for summary determination. The ID finds that Hydro Flask has shown by reliable, probative, and substantial evidence that a violation of section 337 has occurred with respect to the '784, '365, and '888 trademarks, and the D'468, D'012, and D'320 patents, and that the domestic industry requirement is satisfied for the infringed trademarks and patents. The ID finds that a violation has been established with respect to ten out of thirteen defaulting respondents: Cangnan Kaiyisi E-Commerce Technology Co., Ltd.; Yongkang Huiyun Commodity Co., Ltd.; Wuyi Loncin Bottle Co., Ltd.; ZhejiangYongkang Unique Industry & Trade Co., Ltd.; Suzhou Prime

Gifts Co., Ltd.; Hangzhou Yuehua Technology Co., Ltd.; Guangzhou Yawen Technology Co., Ltd.; Jinhua City Ruizhi E-Commerce Co., Ltd.; Wo Ma Te (Tianjin) International Trade Co., Ltd.; and Shenzhen City Yaxin General Machinery Co., Ltd. The ID also finds that no violation has been established as to respondents Shenzhen Huichengyuan Technology Co., Ltd.; Sinbada Impex Co., Ltd.; and Zhejiang Yuchuan Industry & Trade Co., Ltd.

The ID contains the CALJ's recommended determination on remedy and bonding ("RD"). The RD recommends issuance of a GEO with respect to the asserted patents and trademarks. The RD does not recommend issuance of any cease and desist orders. No petitions for review were filed.

The Commission determined to review the subject ID in part. *See* 86 FR 59424-26 (Oct. 27, 2021). Specifically, the Commission determined to review the ID's finding that Hydro Flask has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(A). *Id.*; *see* ID at 89-92. On review, the Commission affirmed the ID's finding that Hydro Flask has established a domestic industry under section 337(a)(3)(A). *Id.* The Commission also requested written submissions on remedy, the public interest, and bonding. *Id.*

On November 4, 2021, Complainants and OUII filed their opening written submissions on remedy, the public interest, and bonding. On November 12, 2021, OUII filed its responsive written submission. No other submissions were received by the Commission.

Having reviewed the submissions filed in response to the Commission request for briefing and the evidentiary record, the Commission has determined that the appropriate form of relief in this investigation is a GEO prohibiting the unlicensed importation of certain vacuum insulated flasks and components thereof that infringe the sole claims of the D'468, D'012, and D'320 patents and the '784, '365, and '888 trademarks.

The Commission has further determined that the public interest factors enumerated in subsection (d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the above-referenced remedial order. Finally, the Commission has determined that a bond in the amount of one

hundred (100) percent of the entered value is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. 1337(j)). The investigation is terminated.

The Commission's order and the record upon which it based its determination were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury of the order.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

The Commission vote for this determination took place on January 5, 2022.

By order of the Commission.

Issued: January 5, 2022.

Lisa Barton,

Secretary to the Commission.

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